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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 271

PARAMINO LUMBER COMPANY AND UNION INSURANCE SOCIETY OF CANTON, LTD., APPELLANTS,

vs.

WM. A. MARSHALL, DEPUTY COMMISSIONER, FOURTEENTH COMPENSATION DISTRICT UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AND JOHN T. CLARK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

FILED AUGUST 7, 1939.

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[fol. 2]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 47

PARAMINO LUMBER COMPANY, a Corporation, and UNION INSURANCE SOCIETY OF CANTON, LTD., a Corporation, Complainants,

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and John T. Clark, Defendants

BILL OF COMPLAINT—Filed March 16, 1939

Come now the complainants above named, and file this, their Bill of Complaint herein, against the above named defendants, and allege:

I

That the complainant, Paramino Lumber Company, a corporation, is now and at all times herein mentioned, was a corporation organized and existing under and by virtue of the laws of the State of California, and an employer within the provisions of the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A., §§ 901 et seq.), hereinafter referred to as the "Act".

II

That the complainant, Union Insurance Society of Canton, Ltd., is now and at all times herein mentioned, was an insurance company organized as a corporation under and by virtue of the laws of Great Britain, and was and now is duly licensed to carry on its corporate business as a foreign corporation within the State of Washington, and has complied with the laws of said state pertaining to for-[fol. 3] eign corporations and corporations engaged in the insurance business within said state. That during all times

herein mentioned, said complainant, Union Insurance Society of Canton, Ltd., was an insurance carrier under the terms of said Act, and was and now is duly authorized to write compensation insurance covering employers and employees who are subject to and within the provisions of said Act, and at all times herein mentioned was the insurance carrier secured by the complainant, Paramino Lumber Company in accordance with the provisions of the said Act.

III

That the defendant, Wm. A. Marshall, is now and at all times herein mentioned, was the Deputy Commissioner for the Fourteenth Compensation District under the provisions of said Act, and is now and at all times herein mentioned, was a citizen and resident of the City of Seattle, State of Washington.

IV

That the defendant, John T. Clark, is now and at all times herein mentioned, was a citizen and resident of the State of Washington.

V

That at all times herein mentioned and now, a diversity of citizenship exists between complainants and defendants, Wm. A. Marshall and John T. Clark; the complainants, Paramino Lumber Company, a corporation, and Union Insurance Society of Canton, Ltd., being citizens and residents of the State of California and the Kingdom of Great Britain, respectively, and the defendants, Wm. A. Marshall and John T. Clark, being citizens and residents of the State of Washington.

VI

That this action is one within the original jurisdiction [fol. 4] of this court, in that:

(a) The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and the matter

(1) Arises under the constitution and laws of the United States, and

(2) Is between citizens of different states, as alleged in Paragraph V hereof.

(b) This action is one in equity authorized by law to be brought to redress the deprivation of a right secured by the laws and constitution of the United States providing for equal rights of citizens of the United States and persons within the jurisdiction of the United States.

VII

That the defendant, John T. Clark, was, on or about the 17th day of January, 1931, an employee of the complainant, Paramino Lumber Company, a corporation, within the provisions of the Act, and had been for some few hours before the occurrence of the injury complained of, engaged as a longshoreman on board the S. S. Dorothy Wintermote, then lying in the navigable waters in the harbor of the City of Seattle, in the State of Washington. That on said date, said John T. Clark suffered personal injuries in pursuance of his said employment, which injuries resulted in a fracture of the tenth rib on the left side, and caused temporary disability under the provisions of said Act. That thereafter, and upon application of said John T. Clark, a hearing on said claim was held on the 25th day of August, 1931, at the office of defendant, Wm. A. Marshall, at 452 Colman Building, Seattle, Washington, at the hour of two o'clock P. M., pursuant to the provisions of the Act, before said defendant, Wm. A. Marshall, as Deputy Commissioner, which said hearing resulted in the filing of a compensation order and award of compensation on the 26th day of August, [fol. 5] 1931, wherein it was found that said claimant, John T. Clark, was wholly disabled from January 17th, 1931, to and including July 4th, 1931, as the result of said injury claimed, and that said John T. Clark had recovered from his said injury and disability occasioned thereby on July 5th, 1931. That a true and correct copy of said compensation order and award is attached hereto, marked Exhibit "A", and by this reference made a part hereof and incorporated herein as though fully set forth, and all amounts required to be paid under said award have been paid to said defendant, John T. Clark, by these complainants.

VIII

That pursuant to the terms and provisions of said Act, said compensation order and award made and filed on the 26th day of August, 1931, became final at the expiration of

the thirtieth day thereafter. That no proceedings to review, suspend or set aside said award, in whole or in part, were brought by any party in interest against the Deputy Commissioner making said award or otherwise, as required by the terms and provisions of said Act, either within thirty days after the entry and filing of said award or otherwise, and that said award therefore became final as provided by law.

IX

That said compensation order and award having become final as provided by law, and the rights of the parties having been thus finally adjudicated and determined, and no proceedings having been instituted to review, suspend or set aside said award in whole or in part, within thirty days after the filing of said award as aforesaid, or at all, the Senate and House of Representatives of the United States of America, in the 74th Congress assembled, passed that certain Private Act entitled "An Act—For the relief of John T. Clark, of Seattle, Washington," which said act [fol. 6] was approved and signed by Franklin D. Roosevelt, President of the United States of America, on the 10th day of April, 1936, which said private act is numbered 445—74th Congress of the United States, and is in words and figures as follows, to-wit:

"(Private—No. 445—74th Congress)

(H. R. 4439).

AN ACT

For the relief of John T. Clark, of Seattle, Washington.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in the case of John T. Clark, of Seattle, Washington, whose disability compensation under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was terminated as of July 5, 1931, by a compensation order filed August 26, 1931, the Employees' Compensation Commission be, and it is hereby, authorized and directed to review such order in accordance with the procedure prescribed in respect of such claims in section 19 of said Act, and in accordance with such section to issue a new compensation order which may terminate, continue, increase, or

decrease such compensation, the provisions of sections 21 and 22 of the said Act, as amended, to the contrary notwithstanding: Provided, That such new order shall not affect any compensation paid under authority of the prior order.

"Approved, April 10, 1936."

X

That said Private Act 445—74th Congress (H. R. 4439), approved by the President April 10th, 1936, is unconstitutional, void and of no force and effect, and is in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in that it denies to these complainants the equal protection of the laws of the United States enjoyed by others similarly situated and grants to the defendant, John T. Clark, special privileges not accorded equally to other employees under the Act, and deprives these complainants of their property without due process of law, all of which was so recognized by the United States Senate Committee on Claims in its report No. 1645 of the 74th Congress of the United States, first session, wherein, [fol. 7] among other matters, it is stated in reference thereto:

"Your Committee is frank to admit that it has had no other cases of this kind, and that as stated by the Employees' Compensation Commission, a private act of this nature might be successfully attacked by the employer or the insurance company in the courts."

That appended thereto are several letters from said United States Employees' Compensation Commission referred to, wherein it is stated in reference thereto:

"The proposed measure, quoted above, would no doubt be open to objection on constitutional grounds, among other things because of its discriminatory nature in that it would grant a special privilege not accorded equally to other employees under the act. It would also disturb vested rights. Similar State acts, so far as the Commission has noted, have uniformly been held unconstiutional or invalid, and in this connection the committee's attention is called to the following illustrative cases: *Casieri's case* (190 N. E. 118, Mass. 1934); and *Roles Shingle Company* v. *Bergerson* (19 Pac. (2d) 94, Oreg. 1933).

"Aside from the fact that the draft of the proposed bill would impose upon the Commission a function in this particular case which is in the nature of a duty imposed under the Longshoremen's Act upon its deputy commissioners, the constitutional infirmity of the measure would leave little doubt that any order issued thereunder would be successfully attacked in court by the employer or insurance carrier."

XI

That on or about the 17th day of June, 1936, defendant, Wm. A. Marshall, upon application of said John T. Clark and pursuant to said Private Act of Congress aforesaid, unlawfully ordered a further hearing on said claim to be held before said defendant as Deputy Commissioner of the Fourteenth Compensation District of the United States, Employees' Compensation Commission, at the office of the said Deputy Commissioner, 620 Federal Office Building, Seattle, Washington, on the 7th day of July, 1936, at one o'clock P. M., of said date. That a true and correct copy of said notice of hearing is attached hereto marked Exhibit "B" and by this reference made a part hereof and incorporated herein, as though fully set forth.

[fol. 8]

XII

That complainants, contending that said defendant, Wm. A. Marshall, was without jurisdiction or authority to take any further proceedings or action in connection with said claim, of any character whatsoever, under said Private Act set forth in Paragraph IX hereof or otherwise, and that said notice herein referred to and attached hereto as Exhibit "B" was issued by said defendant without lawful authority, and that the same was wholly void and contrary to law and the provisions of said Act, and that the same was unlawfully issued by said defendant pursuant to said unconstitutional Act of Congress set forth in Paragraph IX hereof, instituted an action in equity in this Court entitled: "Paramino Lumber Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, Complainants, vs. Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, Defendants, John T. Clark, Intervening Defendant",

being cause No. 1147 of the records and files of the Clerk of this Court, which said records and files in said cause are hereby referred to and made a part hereof, as though fully set forth; that thereafter, an Order was entered dismissing complainants' said bill of complaint and amended bill of complaint in said cause, as more fully appears from the records and files of said cause, for the reasons set forth in the written decision of this Court reported in 18 Federal Supplement, at page 645, which said decision is hereby referred to and made a part hereof, as though fully set forth; that thereafter, complainants, feeling aggrieved at said order of dismissal and to preserve their right to challenge the constitutionality of said Private Act referred to in Paragraph IX hereof, appealed therefrom in the manner provided by law to the United States Circuit Court of Appeals, for the Ninth Circuit, which said Court, after [fol. 9] hearing, affirmed the order of this Court dismissing said bill of complaint and amended bill of complaint, for reasons more fully appearing in the decision of said United States Circuit Court of Appeals, for the Ninth Circuit, reported in 95 Federal (2d), at page 203, which said decision is hereby referred to and made a part hereof, as though fully set forth herein; that thereafter, the complainants, in the manner provided by law and rules of Court, made application to the Supreme Court of the United States for a writ of certiorari to review said decision of said United States Circuit Court of Appeals, for the Ninth Circuit, which said application for writ of certiorari was, on the 10th day of October, 1938, denied.

XIII

That thereafter, and on the 1st day of November, 1938, said defendant, Wm. A. Marshall, in compliance with the provision of said Private Act of Congress referred to more fully in Paragraph IX hereof, issued a notice of hearing on said claim to be held on the 22nd day of November, 1938, at 1:00 o'clock P. M., in the office of said defendant, Wm. A. Marshall, as Deputy Commissioner, 620 Federal Office Building, Seattle, Washington, a true and correct copy of which notice of hearing is attached hereto, marked Exhibit "C", and by this reference made a part hereof, as though fully set forth herein.

XIV

That pursuant to said notice, and over complainants' objections, a hearing on said claim was held by said defendant, Wm. A. Marshall, as Deputy Commissioner, witnesses having been sworn and testimony having been taken, and said hearing having been continued for the taking of further testimony to the 5th day of January, 1939, and further testimony having been taken on said date, said defendant, Wm. A. Marshall, on the 13th day of March, 1939, [fol. 10] issued from and filed in his office, a further compensation order and award of compensation under and pursuant to said Private Act of Congress, more fully referred to in Paragraph IX hereof, in which, among other things, it was found that said defendant, John T. Clark, as claimant therein, was wholly disabled from January 17th, 1931, to and including January 5th, 1939, for which he was entitled to 415-6/7 weeks' compensation at $11.54 per week, amounting to the sum of $4,798.99, and that the total disability of said defendant, John T. Clark, as claimant, continued at the time of the hearing on January 5th, 1939; that pursuant to the findings contained in said compensation order and award, said defendant, Wm. A Marshall, under authority of said Private Act of Congress more fully set forth in Paragraph IX hereof, made the following award:

"That the employer, SS 'Dorothy Wintermote' and/or Paramino Lumber Company, and the insurance carrier, Union Insurance Society of Canton, Ltd. shall pay to the claimant compensation as follows: 415-6/7 weeks' compensation at $11.54 per week covering the period from January 17, 1931, to and including January 5, 1939, and amounting to the sum of $4,798.99, less $200.00 to be deducted therefrom and paid Oscar A. Zabel as his attorney; that the employer shall have credit on this award for $331.20 previously paid to the claimant as compensation; that subsequent to January 5, 1939, the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of $11.54 per week; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability."

That a true and correct copy of said compensation order and award is attached hereto, marked Exhibit "D", and by this reference made a part hereof and incorporated herein, as though fully set forth.

XV

That said defendant, Wm. A. Marshall, was and is without jurisdiction or authority to take any further proceedings or action in connection with said claim, of any character [fol. 11] whatsoever, and that said notices of hearing referred to and attached hereto as Exhibits "B" and "C", the holding of said hearings, and the said compensation order and award of compensation referred to and attached hereto as Exhibit "D", were issued, held and filed by said defendant, Wm. A. Marshall, without lawful authority, and the same are wholly void and contrary to law and the provisions of said Act; that all proceedings taken by the said defendant, Wm. A. Marshall, subsequent to the filing of that certain compensation order and award of compensation on the 26th day of August, 1931, referred to more fully in Paragraph VII hereof, were without lawful authority, and wholly void and contrary to law and the provisions of said Act.

XVI

That as a result of the aforesaid proceedings taken by said defendant, Wm. A. Marshall, in connection with said claim pursuant to said Private Act of Congress more fully referred to in Paragraph IX hereof, and more particularly, the unlawful issuance of said compensation order and award of compensation on the 13th day of March, 1939, requiring complainants to pay compensation to said defendant, John T. Clark, as provided in said compensation order and award, complainants will be thereby irreparably damaged and injured in the following particulars:

(a) That unless the payments required to be made under and pursuant to said compensation order and award of compensation issued and filed by said defendant, Wm. A. Marshall, on the 13th day of March, 1939, and made a part hereof as Exhibit "D", are forthwith enjoined and restrained, and said compensation order and award of compensation forthwith set aside and declared void, and said

Private Act of Congress set forth in Paragraph IX hereof declared unconstitutional and void for the reasons set forth in Paragraph X hereof, said complainants will be required [fol. 12] to pay to said defendant, John T. Clark, the sum of $4,467.79, and thereafter, the sum of $11.54 per week, until the full sum of $7,500.00 has been paid by complainants to said defendant, John T. Clark; that if complainants, on an appeal from said compensation order and award, or pending final decision herein, fail to secure an order staying payments thereunder, all or substantially all of said payments will be required to be made pending the final disposition of said appeal or review proceedings, and upon the successful termination of said appeal or review proceedings, or this proceeding, complainants will be unable to recover from the said defendant, John T. Clark, the amounts so paid, due to the fact that said defendant, John T. Clark, is insolvent and wholly without assets from which any judgment for such recovery may be satisfied; that if complainants, despite said compensation order and award, fail and refuse to comply therewith, and to pay the amounts provided therein within ten (10) days from and after the date said compensation order was filed, to-wit: ten days from and after the 13th day of March, 1939, no order staying the same being secured on an appeal therefrom, or in these proceedings, complainants will be required to pay, in addition to said amounts, an amount equal to twenty per cent thereof as a penalty; that complainants have no plain, speedy or adequate remedy at law to review and set aside said order and award of compensation, or to restrain and enjoin the payments of compensation required to be made thereunder;

(b) That said Private Act No. 445-74th Congress (H. R. 4439) is not a part of the Longshoremen's and Harbor Workers' Compensation Act, nor is it amendatory of or supplementary thereto, and complainants have no remedy by appeal or at law to obtain the relief sought herein, in that said Private Act No. 445-74th Congress (H. R. 4439) contains no provision or terms authorizing or permitting an appeal from any compensation order or award made by said [fol. 13] defendant, Wm. A. Marshall, in pursuance thereof, or any provision pursuant to which complainants could institute proceedings to set aside, review or suspend said award.

XVII

That said defendant, John T. Clark, is wholly insolvent and without funds, and unless a temporary restraining order be immediately entered by the Court restraining and staying the amounts of compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true copy of which is attached hereto, marked Exhibit "D", and by reference made a part hereof, complainants will be required to pay to said John T. Clark, the amounts of compensation provided by said award within ten (10) days from and after the 13th day of March, 1939, or incur a penalty equal to twenty per cent of the amounts of compensation payable thereunder, and complainants will thereby lose the benefits of any favorable decision herein, and by reason thereof, will suffer irreparable damage and injury.

Wherefore, complainants pray as follows:

1. That a temporary restraining order be immediately issued restraining, enjoining and staying the amounts of compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached hereto, marked Exhibit "D", and made a part hereof;

2. That said defendants be required to show cause on a date certain why a preliminary injunction enjoining, restraining and staying the amounts of compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true [fol. 14] copy of which is attached hereto, marked Exhibit "D", should not issue during the pendency of this cause and until final decision herein;

3. And upon a hearing of said cause upon its merits, that a permanent injunction be issued by the Court, permanently restraining and enjoining all payments of compensation required to be made by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true copy of which is attached hereto, marked Exhibit "D", and made a part hereof;

4. That upon a hearing of this cause upon its merits, that said Private Act of Congress No. 445-74th Congress (H. R.

4439), more particularly referred to and set forth in Paragraph IX hereof, be declared unconstitutional, void and of no force and effect, and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that all proceedings by said defendant, Wm. A. Marshall, pursuant thereto, be declared unlawful and void, and that said compensation order and award issued by said defendant, Wm. A. Marshall, and filed in his office on the 13th day of March, 1939, above referred to and attached hereto as Exhibit "D", be set aside and declared void;

5. That said defendant, Wm. A. Marshall, and the United States Employees' Compensation Commission be permanently restrained and enjoined from taking any further proceedings or action in connection with said claim of John T. Clark, under or pursuant to said Private Act of Congress No. 445-74th Congress (H. R. 4439) set forth in Paragraph IX hereof, or otherwise;

6. That if deemed necessary or required, a three Judge Court be assembled to hear this cause on its merits pursuant to Title 28, U. S. C. A. Section 380a;

7. That complainants have such other, further or different relief as to the court may seem equitable and just, together [fol. 15] with costs of suit.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

Duly sworn to by Stanley B. Long. Jurat omitted in printing.

[fol. 16] EXHIBIT "A" TO COMPLAINT

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
FOURTEENTH COMPENSATION DISTRICT

In the Matter of the Claim for Compensation Under the Longshoremen's and Harbor Workers' Compensation Act

JOHN T. CLARK, Claimant,

against

SS. "DOROTHY WINTERMOTE" and/or PARAMINO LUMBER COMPANY, Employer, Union Insurance Society of Canton, Ltd., Insurance Carrier

Compensation Order, Award of Compensation, Case #104-19

Such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law,

The Deputy Commissioner makes the following Findings of Fact:

That on the 17th day of January, 1931, the claimant above named was in the employ of the employer above named at Seattle, in the State of Washington in the Fourteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Union Insurance Society of Canton, Ltd.; that on said day claimant herein, while performing service for the employer upon the navigable waters of the United States, sustained personal injury resulting in his disability while he was employed as a longshoreman on board the steamship "Dorothy Wintermote", said steamship being then afloat at Seattle, in the State of Washington; that while the claimant above named was so employed, he slipped and fell against a pile of lumber, sustaining a fracture of the 10th rib on the left side, and resulting in his disability; that notice of injury was given within thirty days after the date of such injury to the Deputy Commissioner and to the employer; that the employer furnished claimant with medical treatment, etc., in accordance with section 7 (a) of the said Act; that the average annual earnings of the

claimant herein at the time of his injury amounted to the sum of $900.00; that as the result of the injury sustained the claimant was wholly disabled from January 17, 1931, to and including July 4, 1931, and he is entitled to 24-1/7 weeks' compensation, $11.54 per week, for such disability; that the claimant had recovered from his injury on July 5, 1931; that the employer has paid $331.20 to the claimant as compensation.

Upon the foregoing facts, the Deputy Commissioner makes the following award:

That the employer, SS "Dorothy Wintermote" and/or Paramino Lumber Company, and the insurance carrier, Union Insurance Society of Canton, Ltd., shall pay to the claimant compensation as follows: $278.61; that the em-
[fol. 17] ployer shall have credit on this Award for $331.20 previously paid to the claimant as compensation.

Given under my hand at Seattle, Washington, this 26th day of August 1931.

(S.) Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District.

Proof of Service

I hereby certify that a copy of the foregoing Compensation Order was sent by registered mail to the Claimant, the Employer, and the Insurance Carrier at the last known address of each as follows:

Mr. John T. Clark, 808—7th Ave., Seattle, Washington.

SS "Dorothy Wintermote" and/or Paramino Lumber Co. #1 Drumm Street, San Francisco, California.

Union Insurance Society of Canton, Ltd., 1425 Dexter Horton Bldg., Seattle, Washington, % Mr. Pelly.

Mr. Samuel B. Bassett, 511 Alaska Bldg., Seattle, Washington.

Mailed August 26, 1931.

(S.) Wm. A. Marshall, Deputy Commissioner.

[fol. 18] EXHIBIT "B" TO COMPLAINT

UNITED STATES OF AMERICA, UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Case No. 104-19

Bogle, Bogle & Gates, 611 Central Bldg., Seattle, Wn.

Mrs. Mary White-Bible, P. O. Box, Seattle, Wn.

In the Matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act

JOHN T. CLARK, Claimant,

against

"DOROTHY WINTERMOTE", Employer, UNION INS. SOCIETY OF CANTON, LTD., Insurance Carrier

Mr. John T. Clark, address % Oscar A. Zabel, 1001-24th & Pike Bldg., Seattle, Wn.,

And S. S. "Dorothy Wintermote", address #1 Drumm St., San Francisco, California,

And Union Insurance Society of Canton, Ltd., address % Balfour Guthrie & Company, Ltd., Seattle, Wn.

NOTICE OF HEARING

You are hereby notified that upon application made by Claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Wm. A. Marshall, Deputy Commissioner, 14th Compensation District of the United States Employees' Compensation Commission, at the office of the Deputy Commissioner, 620 Federal Office Bldg., in the City of Seattle, Washington, on the 7th day of July, 1936, at 1:00 P. M. of that day.

In testimony whereof, the undersigned, a Deputy Commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at Seattle, Washington, this 17th day of June, 1936.

Wm. A. Marshall, Deputy Commissioner, 14th Compensation District.

[fol. 19] EXHIBIT "C" TO COMPLAINT

UNITED STATES EMPLOYEES COMPENSATION COMMISSION,
FOURTEENTH COMPENSATION DISTRICT

Case No. 104-19

In the Matter of the Claim for Compensation under the Longshoremen's and Harbor Workers Compensation Act.

JOHN T. CLARK, Claimant,

against

S. S. "DOROTHY WINTERMOTE" &/or PARAMINO LUMBER COMPANY, Employer, Union Insurance Society of Canton, Ltd., Insurance Carrier

NOTICE OF HEARING

In compliance with the provisions of Priv-e Act No. 445, 74th Congress, a hearing will be held at the office of the deputy commissioner, 620 Federal Office Building, Seattle, Washington, on November 22, 1938, at 1:00 o'clock, P. M.

Given under my hand at Seattle, Washington, this 1st day of November, 1938.

Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District.

Mr. John T. Clark, % Oscar Zabel, 4th & Pike Bldg., Seattle, Wn.

Mr. Oscar A. Zabel, 4th & Pike Bldg., Seattle, Wn.

S. S. Dorothy Wintermote &/or Paramino Lumber Co., #1 Drum St., San Francisco, Calif.

Bogle, Bogle & Gates, Central Bldg., Seattle, Wash.

Mrs. Mary White-Bible, 243 Central Bldg., Seattle, Wn.

[fol. 20] EXHIBIT "D" TO COMPLAINT

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
FOURTEENTH COMPENSATION DISTRICT

Case No. 104-19

In the Matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act.

JOHN T. CLARK, Claimant,

against

S. S. "DOROTHY WINTERMOTE" and/or PARAMINO LUMBER COMPANY, Employer, Union Insurance Society of Canton, Ltd., Insurance Carrier

COMPENSATION ORDER, AWARD OF COMPENSATION

By authority of the provisions contained in Private Act No. 445, 74th Congress, approved April 10, 1936, hearings were held by the Deputy Commissioner on November 22, 1938, and on January 5, 1939, and the Deputy Commissioner having been authorized by the United States Employees' Compensation Commission to make findings of fact and an order and award of compensation, and such an order or award of compensation as may be indicated by such findings,

The Deputy Commissioner makes the following Findings of Fact:

That on the 17th day of January, 1931, the claimant above named was in the employ of the employer above named at Seattle, in the State of Washington in the Fourteenth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Union Insurance Society of Canton, Ltd.; that on said day claimant herein, while performing service for the employer upon the navigable waters of the United States, sustained personal injury resulting in his disability while he was employed as a longshoreman on board the steamship "Dorothy Wintermote", said steamship being then afloat at Seattle, in the State of Washington; that while the claimant above named was so employed he slipped and fell against a pile of lumber, sus-

taining a fracture of the 10th rib on the left side, and resulting in his disability; that notice of injury was given within thirty days after the date of such injury to the Deputy Commissioner and to the employer; that the employer furnished claimant with medical treatment, etc., in accordance with section 7 (a) of the said Act; that the average annual earnings of the claimant herein at the time of his injury amounted to the sum of $900.00; that as the result of the injury sustained the claimant was wholly disabled from January 17, 1931, to and including January 5, 1939, and he is entitled to 415-6/7 weeks' compensation at $11.54 per week for such disability and amounting to the sum of $4,798.99; that the total disability of the claimant continued at the time of the hearing on January 5, 1939; that the employer has paid $331.20 to the claimant as compensation; that Oscar A. Zabel, attorney, has rendered legal services to claimant of the reasonable value of $200.00 and he is entitled to a lien on compensation due claimant therefor.

[fol. 21] Upon the foregoing facts the Deputy Commissioner makes the following Award:

That the employer, SS "Dorothy Wintermote" &/or Paramino Lumber Company, and the insurance carrier, Union Insurance Society of Canton, Ltd., shall pay to the claimant compensation as follows: 415-6/7 weeks' compensation at $11.54 per week covering the period from January 17, 1931, to and including January 5, 1939, and amounting to the sum of $4,798.99, less $200.00 to be deducted therefrom and paid Oscar A. Zabel as his attorney; that the employer shall have credit on this award for $331.20 previously paid to the claimant as compensation; that subsequent to January 5, 1939, the employer and insurance carrier shall pay compensation to the claimant bi-weekly at the rate of $11.54 per week; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability.

Given under my hand at Seattle, Washington, this 13th day of March, 1939.

(Signed) Wm. A. Marshall, Deputy Commissioner,
Fourteenth Compensation District.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant, the

employer and the insurance carrier, at the last known address of each as follows:

Mr. John T. Clark, 220-9th Ave., Seattle, Wn.
SS "Dorothy Winternote" &/or Paramino Lumber Co., #1 Drumm St., San Francisco, Cal. Union Ins. Society of Canton, Ltd., % Bogle, Bogle, & Gates, Central Bldg., Seattle, Wn.
Oscar A. Zabel, Atty., 4th & Pike Bldg., Seattle, Wn.

(Signed) Wm. A. Marshall, Deputy Commissioner.

Mailed March 13, 1939.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

Civil Action File No. 47.

[Title omitted].

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Bogle, Bogle & Gates, plaintiff's attorney, whose address 604 Central Bldg., Seattle, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Elmer Dover, Clerk of Court, by Elmo Bell, Deputy Clerk. (Seal of Court.)

Date: March 16, 1939.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 23] RETURN ON SERVICE OF WRIT

No. 47

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, by handing to and leaving a true and correct copy thereof with Jeannette McDonald, Secretary to Wm. A. Marshall, who was willing to accept same for him, personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's Fees $2.15.

(Endorsed: Filed Mar. 20, 1939). Elmer Dover, Clerk.

[fol. 24] RETURN ON SERVICE OF WRIT

No. 47

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named John T. Clark by handing to and leaving a true and correct copy thereof with him personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's fees $2.10.

(Endorsed: Filed Mar. 20, 1939. Elmer Dover, Clerk.)

[fol. 25] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named J. Charles Dennis, U. S. District Attorney, by handing to and leaving a true and correct copy thereof with Annette Griffith, Secretary in Charge, U. S. Attorney's Office, personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's Fees $2.00.

(Endorsed: Filed Mar. 20, 1939. Elmer Dover, Clerk.)

[fol. 26] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 48

PARAMINO LUMBER COMPANY, a corporation, and UNION INSURANCE SOCIETY OF CANTON, LTD., a corporation, Complainants,

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and JOHN T. CLARK, Defendants

BILL OF COMPLAINT—Filed March 16, 1939

Come now the complainants above named, and file this, their Bill of Complaint herein, against the above named defendants, and allege:

I

That the complainant, Paramino Lumber Company, a corporation, is now and at all times herein mentioned, was a corporation organized and existing under and by virtue of the laws of the State of California, and an employer

within the provisions of the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A., §§ 901 et seq.), hereinafter referred to as the "Act".

II

That the complainant, Union Insurance Society of Canton, Ltd., is now and at all times herein mentioned, was an insurance company organized as a corporation under and by virtue of the laws of Great Britain, and was and now is duly licensed to carry on its corporate business as a foreign corporation within the State of Washington, and has complied with the laws of said state pertaining to foreign corporations and corporations engaged in the in- [fol. 27] surance business within said state. That during all times herein mentioned, said complainant, Union Insurance Society of Canton, Ltd., was an insurance carrier under the terms of said Act, and was and now is duly authorized to write compensation insurance covering employers and employees who are subject to and within the provisions of said Act, and at all times herein mentioned was the insurance carrier secured by the complainant, Paramino Lumber Company in accordance with the provisions of the said Act.

III

That the defendant, Wm. A. Marshall, is now and at all times herein mentioned, was the Deputy Commissioner for the Fourteenth Compensation District under the provisions of said Act, and is now and at all times herein mentioned, was a citizen and resident of the City of Seattle, State of Washington.

IV

That the defendant, John T. Clark, is now and at all times herein mentioned, was a citizen and resident of the State of Washington.

V

That the defendant, John T. Clark, was, on or about the 17th day of January, 1931, an employee of the complainant, Paramino Lumber Company, a corporation, within the provisions of the Act, and had been for some few hours before the occurrence of the injury complained of, engaged as a longshoreman on board the SS Dorothy Wintermote, then lying in the navigable waters in the harbor of the

City of Seattle, in the State of Washington. That on said date, said John T. Clark suffered personal injuries in pursuance of his said employment, which injuries resulted in a fracture of the tenth rib on the left side, and caused temporary disability under the provisions of said Act. [fol. 28] That thereafter, and upon application of said John T. Clark, a hearing on said claim was held on the 25th day of August, 1931, at the office of defendant, Wm. A. Marshall, at 452 Colman Building, Seattle, Washington, at the hour of two o'clock P. M., pursuant to the provisions of the Act, before said defendant, Wm. A. Marshall, as Deputy Commissioner, which said hearing resulted in the filing of a compensation order and award of compensation on the 26th day of August, 1931, wherein it was found that said claimant, John T. Clark, was wholly disabled from January 17th, 1931, to and including July 4th, 1931, as a result of said injury claimed, and that said John T. Clark had recovered from his said injury and disability occasioned thereby on July 5th, 1931. That a true and correct copy of said compensation order and award is attached hereto, marked Exhibit "A", and by this reference made a part hereof and incorporated herein as though fully set forth, and all amounts required to be paid under said award have been paid to said defendant, John T. Clark, by these complainants.

VI

That pursuant to the terms and provisions of said Act, said compensation order and award made and filed on the 26th day of August, 1931, became final at the expiration of the thirtieth day thereafter. That no proceedings to review, suspend or set aside said award, in whole or in part, were brought by any party in interest against the Deputy Commissioner making said award or otherwise, as required by the terms and provisions of said Act, either within thirty days after the entry and filing of said award or otherwise, and that said award therefore became final as provided by law.

VII

That said compensation order and award having become final as provided by law, and the rights of the parties having been thus finally adjudicated and determined, and no pro- [fol. 29] ceedings having been instituted to review, suspend or set aside said award in whole or in part, within thirty

days after the filing of said award as aforesaid, or at all, the Senate and House of Representatives of the United States of America, in the 74th Congress assembled, passed that certain Private Act entitled "An Act—For the relief of John T. Clark, of Seattle, Washington," which said act was approved and signed by Franklin D. Roosevelt, President of the United States of America, on the 10th day of April, 1936, which said private act is numbered 445-74th Congress of the United States, and is in words and figures as follows, to-wit:

"(Private—No. 445—74th Congress)

(H. R. 4439)

An Act For the relief of John T. Clark, of Seattle, Washington

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in the case of John T. Clark, of Seattle, Washington, whose disability compensation under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was terminated as of July 5, 1931, by a compensation order filed August 26, 1931, the Employees' Compensation Commission be, and it is hereby, authorized and directed to review such order in accordance with the procedure prescribed in respect of such claims in section 19 of said Act, and in accordance with such section to issue a new compensation order which may terminate, continue, increase, or decrease such compensation, the provisions of sections 21 and 22 of the said Act, as amended, to the contrary notwithstanding: Provided, That such new order shall not affect any compensation paid under authority of the prior order.

"Approved, April 10, 1936."

VIII

That said Private Act 445-74th Congress (H. R. 4439), approved by the President April 10th, 1936, is unconstitutional, void and of no force and effect, and is in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in that it denies to these complainants the equal protection of the laws of the United States enjoyed by others similarly situated and grants to

[fol. 30] the defendant, John T. Clark, special privileges not accorded equally to other employees under the Act, and deprives these complainants of their property without due process of law, all of which was so recognized by the United States Senate Committee on Claims in its report No. 1645 of the 74th Congress of the United States, first session, wherein, among other matters, it is stated in reference thereto:

"Your Committee is frank to admit that it has had no other cases of this kind, and that, as stated by the Employees' Compensation Commission, a private act of this nature might be successfully attacked by the employer or the Insurance company in the courts."

That appended thereto are several letters from said United States Employees' Compensation Commission referred to, wherein it is stated in reference thereto:

"The proposed measure, quoted above, would no doubt be open to objection on constitutional grounds, among other things because of its discriminatory nature in that it would grant a special privilege not accorded equally to other employees under the act. It would also disturb vested rights. Similar State acts, so far as the Commission has noted, have uniformly been held unconstitutional or invalid, and in this connection the committee's attention is called to the following illustrative cases: Casieri's case (190 N. E. 118, Mass. 1934); and Roles Shingle Company v. Bergerson (19 Pac. (2d) 94, Oreg. 1933).

"Aside from the fact that the draft of the proposed bill would impose upon the Commission a function in this particular case which is in the nature of a duty imposed under the Longshoremen's Act upon its deputy commissioners, the constitutional infirmity of the measure would leave little doubt that any order issued thereunder would be successfully attacked in court by the employer or insurance carrier."

IX

That thereafter, and on the 1st day of November, 1938, said defendant, Wm. A. Marshall, in compliance with the provision of said Private Act of Congress referred to more fully in Paragraph IX hereof, issued a notice of hearing on said claim to be held on the 22nd day of November, 1938,

at 1:00 o'clock P. M., in the office of said defendant, Wm. [fol. 31] A. Marshall, as Deputy Commissioner, 620 Federal Office Building, Seattle, Washington.

X

That pursuant to said notice, and over complainants' objections, a hearing on said claim was held by said defendant, Wm. A. Marshall, as Deputy Commissioner, witnesses having been sworn and testimony having been taken, and said hearing having been continued for the taking of further testimony to the 5th day of January, 1939, and further testimony having been taken on said date, said defendant, Wm. A. Marshall; on the 13th day of March, 1939, issued from and filed in his office, a further compensation order and award of compensation, under and pursuant to said Private Act of Congress, more fully referred to in Paragraph VII hereof, in which, among other things, it was found that said defendant, John T. Clark, as claimant therein, was wholly disabled from January 17th, 1931, to and including January 5th, 1939, for which he was entitled to 415-6/7 weeks' compensation at $11.54 per week, amounting to the sum of $4,798.99, and that the total disability of said defendant, John T. Clark, as claimant, continued at the time of the hearing on January 5th, 1939; that pursuant to the findings contained in said compensation order and award, said defendant, Wm. A. Marshall, under authority of said Private Act of Congress more fully set forth in Paragraph VII hereof, made the following award:

"That the employer, SS. "Dorothy Wintermote" and/or Paramino Lumber Company, and the insurance carrier, Union Insurance Society of Canton, Ltd. shall pay to the claimant compensation as follows: 415-6/7 weeks' compensation at $11.54 per week covering the period from January 17, 1931, to and including January 5, 1939, and amounting to the sum of $4,798.99, less $200.00 to be deducted therefrom and paid Oscar A. Zabel as his attorney; that the employer shall have credit on this award for $331.20 previously paid to the claimant as compensation; that subsequent to January 5, 1939, the employer and insurance carrier shall pay compensation to the claimant bi-weekly at [fol. 32] the rate of $11.54 per week; that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability."

That a true and correct copy of said compensation order and award is attached hereto, marked Exhibit "B", and by this reference made a part hereof and incorporated herein, as though fully set forth. That certified copies of the transcripts of the testimony taken at the hearings held before said Deputy Commissioner on August 25th, 1931, November 22nd, 1938, and January 5th, 1939, together with all Exhibits filed and received in evidence in connection therewith, will be filed in this cause under the certificate of said Deputy Commissioner, and is by this reference made a part hereof, as though fully set forth herein.

XI

That at all times following the expiration of thirty (30) days from and after the filing of said compensation order and award on the 26th day of August, 1931, hereinabove referred to and attached hereto, and made a part hereof as Exhibit "A", said defendant, Wm. A. Marshall, as Deputy Commissioner, was and is without jurisdiction or authority to take any further proceedings or action in connection with said claim, of any character whatsoever, and that the holding of said hearings on November 22nd, 1938, and January 5th, 1939, and the subsequent issuance of said compensation order and award of compensation filed March 13th, 1939, hereinabove referred to and attached hereto, and made a part hereof as Exhibit "B", were without lawful authority, and the same are wholly void and contrary to law and the provisions of said Act, in this:

1. That said compensation order and award of compensation filed by said defendant, Wm. A. Marshall, as Deputy Commissioner, in connection with said claim on the 26th day [fol. 33] of August, 1931, became final at the expiration of the thirtieth day thereafter, no proceedings to review, suspend or set aside said award, in whole or in part, having been brought by any party in interest against said Deputy Commissioner making said award, or otherwise, as required by the terms and provisions of said Act;

2. That said Private Act 445—74th Congress (H. R. 4439), more fully referred to in Paragraph VII hereof, and pursuant to which said compensation order and award was issued and filed by said Deputy Commissioner on March 13th, 1939, is unconstitutional, void and of no force and effect, and is in violation of the Fifth and Fourteenth

Amendments to the Constitution of the United States, in that it denies to these complainants the equal protection of the laws of the United States enjoyed by others similarly situated and grants to the defendant, John T. Clark, special privileges not accorded equally to other employees under the Act, and deprives these complainants of their property without due process of law;

3. That said compensation order and award of compensation issued and filed by said defendant, Wm. A. Marshall, as Deputy Commissioner, on March 13th, 1939, was issued and filed pursuant to said unconstitutional Private Act of Congress above referred to, was issued without lawful authority, and contrary to the provisions of said Act, and is therefore void and of no force or effect;

4. That there is no substantial, or any evidence upon which the Findings of Fact of said defendant, Wm. A. Marshall, as Deputy Commissioner, as set forth in said compensation order and award filed March 13th, 1939, and attached hereto as Exhibit "B", are or could be based;

5. That the action of said defendant, Wm. A. Marshall, as Deputy Commissioner, in making and filing said compensation order and award on March 13th, 1939, attached hereto [fol. 34] as Exhibit "B", is wholly arbitrary and capricious, and in so doing, the said defendant, Wm. A. Marshall, as Deputy Commissioner, entirely, completely and wilfully disregarded the positive, uncontradicted and credible testimony adduced at the hearings on said claim held on November 22nd, 1938, and January 5th, 1939;

6. That the action of said defendant, Wm. A. Marshall, as Deputy Commissioner, in issuing and filing said compensation order and award on March 13th, 1939, attached hereto as Exhibit "B", was contrary to law and the provisions of said Act, and contrary to the express rulings and opinions of the United States Employees' Compensation Commission, more particularly referred to and set forth in Paragraph VIII hereof;

7. That said defendant, John T. Clark, failed to sustain the burden of proving, or, in fact, offered any substantial testimony authorizing the entry of said findings of fact or said compensation order, or from which any findings of fact could be made to the effect that said defendant, John

T. Clark, was in anywise disabled as the result of his injury sustained on January 17th, 1931, from and after July 4th, 1931, to the date of the issuance and filing of said compensation order and award of March 13th, 1939, or any findings relating to continuing disability therein contained.

XII

That as a result of the aforesaid proceedings taken by said defendant, Wm. A. Marshall, in connection with said claim pursuant to said Private Act of Congress more fully referred to and set forth in Paragraph VII hereof, and more particularly, the unlawful issuance of said compensation order and award of compensation on the 13th day of March, 1939, requiring complainants to pay compensation to said defendant, John T. Clark, as provided in said com- [fol. 35] pensation order and award, complainants will be thereby irreparably damaged and injured in the following particulars:

(a) That unless the payments required to be made under and pursuant to said compensation order and award of compensation issued and filed by said defendant, Wm. A. Marshall, on the 13th day of March, 1939, and made a part hereof as Exhibit "B", are forthwith enjoined and restrained, and said compensation order and award of compensation forthwith set aside and declared void, and said Private Act of Congress set forth in Paragraph VII hereof declared unconstitutional and void, said complainants will be required to pay to said defendant, John T. Clark, the sum of $4,467.79, and thereafter, the sum of $11.54 per week, until the full sum of $7,500.00 has been paid by complainants to said defendant, John T. Clark; that if complainants, on an appeal from said compensation order and award, or in these proceedings to review and set aside said award, fail to secure an order staying payments thereunder, all or substantially all of said payments will be required to be made pending the final disposition of said appeal or review proceedings, and upon the successful termination of said appeal, or review proceedings, or this proceeding, complainants will be unable to recover from said defendant, John T. Clark, the amounts so paid, due to the fact that said defendant, John T. Clark, is insolvent and wholly without assets from which any judgment for such recovery may be satis-

fied; that if complainants, despite said compensation order and award, fail and refuse to comply therewith, and to pay the amounts provided therein within ten (10) days from and after the date said compensation order was filed, to-wit: ten days from and after the 13th day of March, 1939, no order staying the same being secured on an appeal therefrom, or review proceedings taken in connection therewith, [fol. 36] complainants will be required to pay, in addition to said amounts, an amount equal to twenty per cent thereof as a penalty, and that complainants will be required to pay said sums upon application of said defendant, John T. Clark, to this Court in the manner provided by law, and the provisions of said Act, and thereby suffer irreparable damage and injury.

XIII

That said defendant, John T. Clark, is wholly insolvent and without funds, and unless a temporary restraining order be immediately entered by the Court restraining and staying the amounts of compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true copy of which is attached hereto, marked Exhibit "B", and by reference made a part hereof, complainants will be required to pay to said John T. Clark, the amounts of compensation provided by said award within ten (10) days from and after the 13th day of March, 1939, or incur a penalty equal to twenty per cent of the amounts of compensation payable thereunder, and complainants will thereby lose the benefits of any favorable decision herein, and by reason thereof, will suffer irreparable damage and injury.

Wherefore, complainants pray as follows:

1. That a temporary restraining order be immediately issued restraining, enjoining and staying the amounts of compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached hereto, marked Exhibit "B", and made a part hereof;

2. That said defendants be required to show cause on a date certain why a preliminary or interlocutory injunction [fol. 37] enjoining, restraining and staying the amounts of

compensation required to be paid by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true copy of which is attached hereto, marked Exhibit "B", should not issue during the pendency of this cause and until final decision herein;

3. And upon a hearing of said cause upon its merits, that a permanent injunction be issued by the Court, permanently restraining and enjoining all payments of compensation required to be made by said award made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true copy of which is attached hereto, marked Exhibit "B", and made a part hereof, and permanently restraining and enjoining said defendants, and each of them, from taking any action to enforce payment of the compensation provided by said compensation order and award of March 13th, 1939, or to compel complainants to make payment of the amounts provided thereunder;

4. That upon a hearing of this cause upon its merits, that said Private Act of Congress No. 445-74th Congress (H. R. 4439), more particularly referred to and set forth in Paragraph VII hereof, be declared unconstitutional, void and of no force and effect, and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that all proceedings by said defendant, Wm. A. Marshall, pursuant thereto, be declared unlawful and void, and that said compensation order and award issued by said defendant, Wm. A. Marshall, and filed in his office on the 13th day of March, 1939, above referred to and attached hereto as Exhibit "B", be set aside and declared void, being contrary to law and the provisions of said Act;

5. That said defendant, Wm. A. Marshall, and the United [fol. 38] States Employees' Compensation Commission be permanently restrained and enjoined from taking any further proceedings or action in connection with said claim of John T. Clark, under or pursuant to said Private Act of Congress No. 445-74th Congress (H. R. 4439) set forth in Paragraph VII hereof, or otherwise;

5a. That if deemed necessary or required a three-judge Court be assembled to hear this cause on its merits pursuant to Title 28, U. S. C. A. Section 380a;

6. That complainants have such other, further or different relief as to the court may seem equitable and just, together with costs of suit.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

Duly sworn to by Stanley B. Long. Jurat omitted in printing.

[fols. 39-40] Exhibit "A" to complaint omitted. See exhibit "A", printed side page 16, ante.

[fol. 41] Exhibit "B" to complaint omitted. See exhibit "D", printed side page 20, ante.

[fol. 42] [File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

Civil Action File No. 48

[Title omitted]

SUMMONS

To the above named Defendant-:

You are hereby summoned and required to serve upon Bogle, Bogle & Gates, plaintiff's attorney-, whose address — 604 Central Building, Seattle, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Elmer Dover, Clerk of Court, by Elmo Bell, Deputy Clerk. (Seal of Court.)

Date: March 16, 1939.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 44] RETURN ON SERVICE OF WRIT

No. 48

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, by handing to and leaving a true and correct copy thereof with Jeannette McDonald, Secretary to Wm. A. Marshall, who was willing to accept same for him, personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's Fees $2.06.

(Endorsed:) Filed Mar. 20, 1939. Elmer Dover, Clerk.

[fol. 45] RETURN ON SERVICE OF WRIT

No. 48

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named John T. Clark by handing to and leaving a true and correct copy thereof with him personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's Fees $2.06.

(Endorsed:) Filed Mar. 20, 1939. Elmer Dover, Clerk.

[fol. 46] RETURN ON SERVICE OF WRIT

No. 48

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify and return that I served the annexed Summons on the therein-named J. Charles Dennis, U. S. District Attorney, by handing to and leaving a true and correct copy thereof with Annette Griffith, Secretary in Charge, U. S. Attorney's Office, personally at Seattle, Washington in said District on the 17th day of March, A. D. 1939.

A. J. Chitty, U. S. Marshal, by Patrick J. Bradley, Deputy.

Marshal's Fees $2.00.

(Endorsed:) Filed Mar. 20, 1939. Elmer Dover, Clerk.

[fol. 47] IN UNITED STATES DISTRICT COURT

No. 47

[Title omitted]

NOTICE OF HEARING MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed March 16, 1939

To Wm. A. Marshall, defendant above named, and J. Charles Dennis, United States District Attorney, his Solicitor, and John T. Clark, defendant above named, and Oscar A. Zabel, his Solicitor:

You and Each of You will please take notice that the above named complainants will, on the 20th day of March, 1939, at 2:00 o'clock P. M., or as soon thereafter as counsel may be heard, bring on for hearing before the Honorable John C. Bowen, in his court room in the Federal Postoffice Building, Seattle, Washington, their hereto attached motion for temporary restraining order and preliminary injunction.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

No. 47

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed March 16, 1939

Come now the complainants above named, by their solicitors, Messrs. Bogle, Bogle & Gates and Stanley B. Long, and move the Court for an Order temporarily restraining and staying the amounts of compensation required to be paid under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein and marked Exhibit "D" and made a part thereof, and further move the Court for the issuance and entry of a preliminary injunction restraining and staying the amounts of compensation required to be paid under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein and marked Exhibit "D" and made a part thereof, during the pendency of this cause and pending final decision herein, upon the ground and for the reason that irreparable damage and injury [fol. 49] would otherwise ensue to the complainants.

These motions are based upon the verified bill of complaint herein.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 48

NOTICE OF HEARING MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed March 16, 1939

To Wm. A. Marshall, defendant above named, and J. Charles Dennis, United States District Attorney, his Solicitor, and John T. Clark, defendant above named, and Oscar A. Zabel, his Solicitor:

You and Each of You will please take notice that the above-named complainants will, on the 20th day of March, 1939, at 2:00 o'clock, p. m., or as soon thereafter as counsel may be heard, bring on for hearing before the Honorable John C. Bowen, in his court room in the Federal Postoffice Building, Seattle, Washington, their hereto attached motion for temporary restraining order and preliminary injunction.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 48

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed March 16, 1939

Come now the complainants above named, by their solicitors, Messrs. Bogle, Bogle & Gates and Stanley B. Long, and move the Court for an order temporarily restraining and staying the amounts of compensation required to be paid under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein and marked Exhibit "B" and made a part thereof,

and further move the Court for the issuance and entry of a preliminary injunction restraining and staying the amounts of compensation required to be paid under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein and marked Exhibit "B" and made a part thereof, during the pendency of this cause and pending final decision herein, upon the ground and for the reason that irreparable damage and injury would otherwise ensue to the complainants. [fol. 52] These motions are based upon the verified bill of complaint herein.

Bogle, Bogle & Gates, Stanley B. Long, Solicitors for Complainants.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action, File No. 47

MOTION TO DISMISS—Filed March 21, 1939

Comes Now, John T. Clark, defendant above, and moves the Court to dismiss the Bill of Complaint herein on the ground and for the reason that the said Bill of Complaint does not state facts sufficient to constitute a cause of action and for the relief prayed for.

Oscar A. Zabel, Attorney for Defendant John T. Clark.

[File endorsement omitted.]

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action, File No. 48

MOTION TO DISMISS—Filed March 21, 1939

Comes Now, John T. Clark, defendant above, and moves the Court to dismiss the Bill of Complaint herein on the

ground and for the reason that the said Bill of Complaint does not state facts sufficient to constitute a cause of action and for the relief prayed for.

Oscar A. Zabel, Attorney for Defendant John T. Clark.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 47

TEMPORARY RESTRAINING ORDER—Filed March 23, 1939

This matter having come on duly and regularly for hearing before the court upon complainants' motion for temporary restraining order, and complainants having been represented by their solicitors, Bogle, Bogle & Gates and Stanley B. Long, and defendant, Wm. A. Marshall, having been represented by his solicitors, J. Charles Dennis, United States District Attorney, and Gerald Shucklin, Assistant United States District Attorney, and defendant, John T. Clark, having been represented by his solicitor, Oscar A. Zabel; and

It Appearing to the court from the verified bill of complaint herein, that a permanent injunction is sought by complainants suspending and restraining the enforcement, operation and execution of an Act of Congress set forth in said bill of complaint herein, upon the ground that such Act is repugnant to the Constitution of the United States, and the Court, pursuant to Title 28, U. S. C. A., Section 380a, having determined that said cause must be heard and determined by three judges, of whom at least one shall be a Circuit Judge; and

It Appearing to the court from the sworn testimony of [fol. 56] Stanley B. Long, one of the solicitors for complainants, that irreparable loss or damage would result to complainants unless a temporary restraining order is granted herein until hearing and determination of said cause by a three judge court provided for by Title 28, U. S. C. A., Section 380a, and the Court having found

from said sworn testimony, and from the verified bill of complaint herein, that said defendant, John T. Clark, is wholly insolvent and without funds, and that unless a temporary restraining order is forthwith entered herein, staying and restraining the amounts of compensation required to be paid by complainants to the defendant, John T. Clark, under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein as Exhibit "D", during the pendency of this cause and until the hearing and determination thereof by said three judge court, complainants would be required to pay the amounts of compensation ordered under said award, and upon a determination of said cause favorable to complainants, said complainants would be unable to recover from said defendant, John T. Clark, the amounts so paid, due to the fact that said defendant, John T. Clark, is wholly insolvent and without funds from which any judgment for said recovery could be satisfied, and the Court having further found from said sworn testimony and verified bill of complaint herein, that if complainants, despite said compensation order and award, fail to comply therewith, and to pay the amounts provided therein, within ten days from and after the date said compensation order was filed by said Deputy Commissioner, to-wit: ten (10) days from and after the 13th day of March, 1939, complainants will be required to pay, in addition to said amounts, an amount equal to twenty per cent thereof as a penalty, which said amounts complainants would be unable to recover from said [fol. 57] defendant, John T. Clark, upon determination of said cause in their favor, and that complainants would suffer irreparable loss and damage thereby, and the Court deeming this to be a proper cause therefor, and being in the premises advised, it is now, therefore, hereby

Ordered Adjudged and Decreed: That all amounts of compensation required to be paid by complainants to defendant, John T. Clark, under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein as Exhibit "D", be, and the same are hereby temporarily suspended, stayed, restrained and enjoined until a hearing and determination

of this cause is had by a three judge court, as provided for in Title 28, U. S. C. A., Section 380a, and

It is Further Ordered, Adjudged and Decreed: That said defendants, Wm. A. Marshall and John T. Clark, be, and they are hereby temporarily restrained and enjoined from applying for or taking other action for the enforcement of said compensation order and award made by said defendant, Wm. A. Marshall, as Deputy Commissioner, on the 13th day of March, 1939, a true copy of which is attached to complainants' bill of complaint herein as Exhibit "D", until a hearing and determination of this cause is had by a three judge court, as provided for in Title 28, U. S. C. A., Section 380a, and

It is Hereby Further Ordered, Adjudged and Decreed: That upon the filing herein by complainants of a bond in the sum of Five Thousand ($5,000.00) Dollars, approved by this court, conditioned to pay such costs and damages as said defendants, or either of them, may suffer as the result of the issuance of this restraining order, this restraining order [fol. 58] shall be and remain in effect until the hearing and determination of this cause is had by a three judge court, as provided for in Title 28, U. S. C. A., Section 380a, or until the further order of such three judge court.

Done in open court this 23rd day of March, 1939.

John C. Bowen, District Judge.

Approved as to form; Notice of presentation expressly waived:

J. Charles Dennis, U. S. District Attorney, Gerald Shucklin, Asst. U. S. District Attorney, Solicitors for defendant, Wm. A. Marshall. Oscar A. Zabel, Solicitor for defendant, John T. Clark.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

No. 48

[Title omitted]

TEMPORARY RESTRAINING ORDER—Filed March 23, 1939

This matter having come on duly and regularly for hearing before the court upon complainants' motion for tem-

porary restraining order, and complainants having been represented by their solicitors, Bogle, Bogle & Gates and Stanley B. Long, and defendant, Wm. A. Marshall, having been represented by his solicitors, J. Charles Dennis, United States District Attorney, and Gerald Shucklin, Assistant United States District Attorney, and defendant, John T. Clark, having been represented by his solicitor, Oscar A. Zabel; and

It Appearing to the court from the verified bill of complaint herein, that a permanent injunction is sought by complainants suspending and restraining the enforcement, operation and execution of an Act of Congress set forth in said bill of complaint herein, upon the ground that such Act is repugnant to the Constitution of the United States, and the Court, pursuant to Title 28, U. S. C. A., Section 380a, having determined that said cause must be heard and determined by three judges, of whom at least one shall be a Circuit Judge; and

It Appearing to the court from the sworn testimony of Stanley B. Long, one of the solicitors for complainants, [fol. 60] that irreparable loss or damage will result to complainants unless a temporary restraining order is granted herein until hearing and determination of said cause by a three judge court provided for by Title 28, U. S. C. A., Section 380a, and the Court having found from said sworn testimony, and from the verified bill of complaint herein, that said defendant, John T. Clark, is wholly insolvent and without funds, and that unless a temporary restraining order is forthwith entered herein, staying and restraining the amounts of compensation required to be paid by complainants to the defendant, John T. Clark, under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainant's bill of complaint herein as Exhibit "B", during the pendency of this cause and until the hearing and determination thereof by said three judge court, complainants will be required to pay the amounts of compensation ordered under said award, and upon a determination of said cause favorable to complainants, said complainants would be unable to recover from said defendant, John T. Clark, the amounts so paid, due to the fact that said defendant, John T. Clark, is wholly insolvent and without funds from which any judgment for

said recovery could be satisfied, and the Court having further found from said sworn testimony and verified bill of complaint herein, that if complainants, despite said compensation order and award, fail to comply therewith, and to pay the amounts provided therein, within ten days from and after the date said compensation order was filed by said Deputy Commissioner, to-wit: ten (10) days from and after the 13th day of March, 1939, complainants will be required to pay, in addition to said amounts, an amount equal to twenty per cent thereof as a penalty, which said amounts complainants would be unable to recover from said defendant, John T. Clark, upon determination of said cause [fol. 61] in their favor, and that complainants would suffer irreparable loss and damage thereby, and the Court deeming this to be a proper cause therefor, and being in the premises advised, it is now, therefore, hereby

Ordered, Adjudged and Decreed: That all amounts of compensation required to be paid by complainants to defendant, John T. Clark, under that certain compensation order and award of compensation made by said defendant, Wm. A. Marshall, and filed in his office on March 13th, 1939, a true and correct copy of which is attached to complainants' bill of complaint herein as Exhibit "B", be, and the same are hereby temporarily suspended, stayed, restrained and enjoined until a hearing and determination of this cause is had by a three judge court, as provided for in Title 28, U. S. C. A., Section 380a, and

It is Further Ordered, Adjudged and Decreed: That said defendants, Wm. A. Marshall and John T. Clark, be, and they are hereby temporarily restrained and enjoined from applying for or taking other action for the enforcement of said compensation order and award made by said defendant, Wm. A. Marshall, as Deputy Commissioner, on the 13th day of March, 1939, a true copy of which is attached to complainants' bill of complaint herein as Exhibit "B", until a hearing and determination of this cause is had by a three judge court, as provided for in Title 28, U. S. C. A., Section 380a, and

It is Hereby Further Ordered, Adjudged and Decreed: That upon the filing herein by complainants of a bond in the sum of Five Thousand ($5,000.00) Dollars, approved by this court, conditioned to pay such costs and damages as said defendants, or either of them, may suffer as the result of the issuance of this restraining order, this restraining

order shall be and remain in effect until the hearing and determination of this cause is had by a three judge court, as [fol. 62] provided for in Title 28, U. S. C. A., Section 380a, or until the further order of such three judge court.

Done in Open Court this 23rd day of March, 1939.

John C. Bowen, District Judge.

Approved as to form; Notice of presentation expressly waived:

J. Charles Dennis, U. S. District Attorney, Gerald Shucklin, Asst. U. S. District Attorney, Solicitors for defendant, Wm. A. Marshall, Oscar A. Zabel, Solicitor for defendant, John T. Clark.

[File endorsement omitted.]

[fols. 63-65] Bond on restraining orders for $5,000.00 approved and filed March 23, 1939, omitted in printing.

[fol. 66] In United States District Court

(Cause No. 47)

Stipulation as to Hearing

Now on this 28th day of March, 1939, Attorney Stanely Long appearing for the complainants, Gerald Shucklin, Assistant United States District Attorney appearing for Deputy Commissioner Wm. A. Marshall, attorney Oscar Zabel appearing for the defendant John T. Clark, counsel for the respective parties herein now stipulate that Judge Bowen may issue an order fixing the time of hearing and directing the Clerk to give the notice provided by statute of that hearing. Counsel also stipulate that counsel for the respective parties this day appearing have had the statutory five-day notice required, and agree that the hearing be had on Monday, April 24, 1939, at ten o'clock A. M., which date is now fixed by the Court for the hearing. Counsel also stipulate that the application for interlocutory injunction will be submitted on the pleadings, motions and briefs already filed and upon arguments of counsel without further or additional proof. The Clerk is directed to notify Judge Cushman by mail today of the date of hearing.

[fol. 67] IN UNITED STATES DISTRICT COURT

(Cause No. 48)

STIPULATION AS TO HEARING

Now on this 28th day of March, 1939, Attorney Stanely Long appearing for the complainants, Gerald Shucklin, Assistant United States District Attorney appearing for Deputy Commissioner Wm. A. Marshall, attorney Oscar Zabel appearing for the defendant John T. Clark, counsel for the respective parties herein now stipulate that Judge Bowen may issue an order fixing the time of hearing and directing the Clerk to give the notice provided by statute of that hearing. Counsel also stipulate that counsel for the respective parties this day appearing have had the statutory five-day notice required, and agree that the hearing be had on Monday, April 24, 1939, at ten o'clock A. M., which date is now fixed by the Court for the hearing. Counsel also stipulate that the application for interlocutory injunction will be submitted on the pleadings, motions and briefs already filed and upon arguments of counsel without further or additional proof. The Clerk is directed to notify Judge Cushman by mail today of the date of hearing.

[fol. 68] IN UNITED STATES DISTRICT COURT

No. 47

[Title omitted]

ORDER CONVOKING THREE-JUDGE COURT—Filed March 29, 1939

Plaintiffs employer and insurance carrier complaining that Private Act No. 445 of the 74th Congress (H. R. 4439) for the relief of defendant John T. Clark, approved April 10, 1936, and the compensation award pursuant thereto in defendant Clark's favor made March 13, 1939, by William A. Marshall, Deputy Commissioner for the Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A., Secs. 901 et seq.), are illegal, unconstitutional and void, in that such Private Act and award deny to plaintiffs the equal

protection of the laws and deprive them of their property without due process of law contrary to the Fifth and Fourteenth Amendments to the United States Constitution, and plaintiffs further alleging diversity of citizenship and jurisdictional amount and prospective irreparable injury seek temporary restrainer, interlocutory and permanent injunctive relief against said Private Act of Congress and said compensation award and a hearing before a 3-judge court [fol. 69] pursuant to the provisions of 28 U. S. C. A., Sec. 380 (a);

And such application for such interlocutory and permanent injunctive relief having been presented to the undersigned judge of the above entitled court, and the said undersigned judge having immediately thereupon requested the Senior Circuit Judge of the Ninth Circuit to designate two other judges to participate with the undersigned judge as a 3-judge court in hearing and determining such application; and thereupon said Senior Circuit Judge having immediately so designated two other judges for such purpose, to-wit: Honorable William Healy, United States Circuit Judge for the Ninth Circuit, and Honorable Edward E. Cushman, United States District Judge for the Western District of Washington in said Circuit, and by the provisions of said 28 U. S. C. A., Sec. 380(a) it being the duty of said two other judges so designated and of the undersigned judge as such 3-judge court to participate in such hearing and determination; now, therefore,

The undersigned judge does hereby call to his assistance said the Honorable William Healy and said the Honorable Edward E. Cushman to act with the undersigned judge as a 3-judge court pursuant to the requirements of 28 U. S. C. A., Sec. 380(a), and to hear and determine such applications and to hear and determine any and all other matters which may properly come before the court during the progress of the above entitled cause; and

By and with the advice and consent of the members of the court and upon stipulation of counsel for all interests appearing, the date and place of convening of said 3-judge court for the purpose of hearing the application for interlocutory injunction and such other matters as may properly [fol. 70] come before the court are hereby fixed on April 24, 1939, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, in the north court room of this court in the Post Office Building at Seattle, Wash-

ington, provided that the time and place of hearing such application may by order be changed should convenience require it; and

The undersigned judge being now advised by oral stipulation of counsel made in open court that the application for said interlocutory injunction will be submitted at said hearing upon the pleadings, motions, admissions and briefs already filed, made and appearing of record, and upon the arguments of counsel, without further or additional proof, it is further ordered that the Clerk forthwith mail to Judges Healy and Cushman each a copy of all of such pleadings, motions, briefs, and records and a copy of this order, and a copy of temporary restraining order, and that the attorneys of record for plaintiffs are hereby directed to forthwith furnish to the Clerk sufficient copies to enable the Clerk to comply with the foregoing order as to mailing.

It is further hereby ordered that the Clerk forthwith give notice of said hearing on April 24, 1939, and of the entry of this order to the Attorney General of the United States, Department of Justice, Washington, D. C., by forthwith mailing by registered mail to said Attorney General a certified copy of this order, and the attorneys of record for the plaintiffs are hereby ordered to pay to the Clerk the cost of such certified copy and of such registered mailing. Counsel for all parties appearing having heretofore in open court stipulated that all parties do now have actual notice of said hearing on April 24, 1939, the Clerk is hereby directed to [fol. 71] forthwith mail a copy of this order to each of the following:

1. Bogle, Bogle & Gates and Stanley B. Long, Attorneys for Plaintiffs, Seattle, Washington.

2. Oscar A. Zabel, Attorney for Defendant-Claimant John T. Clark, Seattle, Washington.

3. Honorable J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, Attorneys for Defendant William A. Marshall, Seattle, Washington.

Done in open court this 29th day of March, 1939.

John C. Bowen, United States District Judge.

[File endorsement omitted.]

[fol. 72] CERTIFICATE OF CLERK

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to direction of the Hon. John C. Bowen, District Judge, as contained in the attached order, I did, on March 29, 1939, forward to the Attorney General of the United States, Department of Justice, Washington, D. C., a certified copy of the attached order, by registered mail; and did further forward by mail uncertified copies of said order without registration to the following:

Hon. William Healy, United States Circuit Judge, San Francisco, California.

Hon. Edward E. Cushman, United States District Judge, Tacoma, Washington.

Bogle, Bogle & Gates and Stanley B. Long, 603 Central Building, Seattle, Washington.

Oscar A. Zabel, Esq., 1001 4th & Pike Bldg., Seattle, Washington.

Hon. J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, 222 Post Office Building, Seattle, Washington.

In Witness Whereof I have hereunto set my hand and affixed my official seal, this 29th day of March, 1939.

Elmer Dover, Clerk, by Truman Egger, Deputy.
(Seal.)

(Registry Receipt attached hereto.)

[fol. 73] IN UNITED STATES DISTRICT COURT

No. 48

[Title omitted]

ORDER CONVOKING THREE-JUDGE COURT—Filed March 29, 1939

Plaintiffs employer and insurance carrier complaining that after the defendant Clark, a longshoreman, was injured upon one of the employer's vessels in Seattle harbor waters and was under date of August 26, 1931, granted a compensation order and award under the Longshoremen's

and Harbor Workers' Compensation Act (Title 33, U. S. C. A., Secs. 901, et seq.) and that no proceedings were had to review, suspend, or set aside that award in whole or in part, the Senate and House of Representatives of the United States of America passed Private Act No. 445 of the 74th Congress, (H. R. 4439), approved April 10, 1936, for the relief of said John T. Clark and that pursuant to said Private Act defendant Marshall, Deputy Commissioner under said Longshoremen's and Harbor Workers' Compensation Act, under date of March 13, 1939, did make and enter a further compensation order and award of compensation in favor of said Clark, and further that the action of said Deputy Commissioner in so making said award of March 13, 1939, was wholly arbitrary and capricious and against the credible testimony adduced at the hearing and was in all respects illegal;

[fol. 74] And plaintiffs further alleging that said Private Act of Congress and said award of March 13, 1939, made pursuant thereto are under the Fifth and Fourteenth Amendments illegal, unconstitutional and void, seek a review of such acts of the Deputy Commissioner and a hearing upon all of the allegations of plaintiffs' complaint before a 3-judge court pursuant to the provisions of 28 U. S. C. A., Sec. 380(a), and seek a determination by such court that, as alleged by plaintiffs, said Private Act of Congress and said award of the Deputy Commissioner of March 13, 1939, made thereunder are illegal, unconstitutional and void and of no effect and seek temporary restrainer and interlocutory and permanent injunctive relief against said Private Act of Congress and said award;

And such application for such interlocutory and permanent injunctive relief and for such 3-judge court having been presented to the undersigned judge, and the said undersigned judge having immediately thereupon requested the Senior Circuit Judge of the Ninth Circuit to designate two other judges to participate with the undersigned judge as a 3-judge court in hearing and determining such application; and thereupon said Senior Circuit Judge having immediately so designated two other judges for such purpose, to-wit: Honorable William Healy, United States Circuit Judge for the Ninth Circuit, and Honorable Edward E. Cushman, United States District Judge for the Western District of Washington in said Circuit, and by the provisions of said 28 U. S. C. A., Sec. 380(a), it being the duty of said

two other judges so designated and of the undersigned judge as such 3-judge court to participate in such hearing and determination; now, therefore,

[fol. 75] The undersigned judge does hereby call to his assistance said the Honorable William Healy and said the Honorable Edward E. Cushman to act with the undersigned judge as a 3-judge court pursuant to the requirements of 28 U. S. C. A., Sec. 380(a), and to hear and determine such applications and to hear and determine any and all other matters which may properly come before the court during the progress of the above entitled cause; and

By and with the advice and consent of the members of the court and upon stipulation of counsel for all interests appearing, the date and place of convening of said 3-judge court for the purpose of hearing the application for interlocutory injunction and such other matters as may properly come before the court are hereby fixed on April 24, 1939, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, in the north court room of this court in the Post Office Building at Seattle, Washington, provided that the time and place of hearing such application may by order be changed should convenience require it; and

The undersigned judge being now advised by oral stipulation of counsel made in open court that the application for said interlocutory injunction will be submitted at said hearing upon the pleadings, motions, admissions and briefs already filed, made and appearing of record, and upon the arguments of counsel, without further or additional proof, it is further ordered that the Clerk forthwith mail to Judges Healy and Cushman each a copy of all of such pleadings, motions, briefs, and records and a copy of this order, and a copy of temporary restraining order, and that the attorneys of record for plaintiffs are hereby directed to forth-

[fol. 76] with furnish to the Clerk sufficient copies to enable the Clerk to comply with the foregoing order as to mailing.

It is further hereby ordered that the Clerk forthwith give notice of said hearing on April 24, 1939, and of the entry of this order to the Attorney General of the United States, Department of Justice, Washington, D. C., by forthwith mailing by registered mail to said attorney general a certified copy of this order, and the attorneys of record for the plaintiffs are hereby ordered to pay to the Clerk the

cost of such certified copy and of such registered mailing. Counsel for all parties appearing having heretofore in open court stipulated that all parties do now have actual notice of said hearing on April 24, 1939, the Clerk is hereby directed to forthwith mail a copy of this order to each of the following:

1. Bogle, Bogle & Gates and Stanley B. Long, Attorneys for Plaintiffs, Seattle, Washington.

2. Oscar A. Zabel, Attorney for Defendant-Claimant John T. Clark, Seattle, Washington.

3. Honorable J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, Attorneys for Defendant William A. Marshall, Seattle, Washington.

Done in open court this 29th day of March, 1939.

John C. Bowen, United States District Judge.

[fol. 77] CERTIFICATE OF CLERK

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to direction of the Hon. John C. Bowen, District Judge, as contained in the attached order, I did, on March 29, 1939, forward to the Attorney General of the United States, Department of Justice, Washington, D. C., a certified copy of the atttached order, by registered mail; and did further forward by mail ui certified copies of said order without registration to the following:

Hon William Healy, United States Circuit Judge, San Francisco, California; Hon Edward E. Cushman, United States District Judge, Tacoma, Washington; Bogle, Bogle & Gates and Stanley B. Long, 603 Central Building, Seattle, Washington; Oscar A. Zabel, Esq., 1001 4th & Pike Bldg., Seattle, Washington; Hon J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, 222 Post Office Building, Seattle, Washington.

In Witness Whereof I have hereunto set my hand and affixed my official seal, this 29th day of March, 1939.

Elmer Dover, Clerk, by Truman Egger, Deputy.

(Seal.)

(Registry Receipt attached to certificate in No. 47.)

[fol. 78] IN UNITED STATES DISTRICT COURT

Civil Action File No. 47

[Title omitted]

MOTION FOR JUDGMENT OF DISMISSAL ON THE PLEADINGS—Filed April 4, 1939

Comes Now, John T. Clark, defendant above named, and moves the Court for judgment of dismissal on the pleadings herein.

Oscar A. Zabel, Attorney for Defendant John T. Clark.

Copy Received, Apr. 4, 1939.

Bogle, Bogle & Gates.

[File endorsement omitted.]

[fol. 79] IN UNITED DISTRICT COURT

Civil Action File No. 48

[Title omitted]

MOTION FOR JUDGMENT OF DISSMISSAL ON THE PLEADINGS—Filed April 4, 1939

Comes Now, John T. Clark, defendant above named, and moves the Court for judgment of dismissal on the pleadings herein.

Oscar A. Zabel, Attorney for Defendant John T. Clark.

Copy received Apr. 4, 1939, Bogle, Bogle & Gates.

[File endorsement omitted.]

[fol. 80] IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY OF HEARING

Now on this 24th day of April, 1939, Honorable William Healy, United States Circuit Judge, Honorable Edward E. Cushman, United States District Judge and Honorable John C. Bowen, United States District Judge, being present, constituting a statutory three-judge Court, under Title 28,

Section 380a, U. S. C. A., these causes come on for hearing before the Court on hearing on merits; hearing on complainants' application for interlocutory or permanent injunction; hearing on motion of the defendant, John T. Clark to dismiss (Filed March 21, 1939) and hearing on motion of defendant John T. Clark for judgment of dismissal on the pleadings, (filed April 4, 1939). The causes are called for hearing. Both sides are ready. Counsel present are Attorney Stanley Long, of the law firm of Bogle, Bogle & Gates appearing for the complainants, Gerald Shucklin, Assistant United States District Attorney appearing for Wm. A. Marshall, Deputy Commissioner, Attorney Oscar A. Zabel appearing for defendant John T. Clark. Preliminary statements are made by attorney Long, during the course of which complainants move orally that, in view of a recent Circuit Court opinion, these cases be transferred to the Admiralty side of the Court and be there heard, the motions to dismiss to be considered as exceptions. Opposing counsel offer no objection, and the motion is taken under advisement. Attorney Long now moves that these two cases be consolidated for the purpose of this hearing, and the motion is granted. Attorney Shucklin, appearing on behalf of Defendant Marshall, advises the Court that the Government desires to make no argument in this matter. Argument of Attorneys Long and Zabel is heard, and the matter is taken under advisement. • • •

[fol. 81] In United States District Court, Western District of Washington, Northern Division

In Admiralty Nos. 47 and 48

Paramino Lumber Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, Libelants,

vs.

Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and John T. Clark, Respondents

Bogle, Bogle & Gates and Stanley Long, Seattle, Washington, Attorneys for Libelants.

J. Charles Dennis, United States Attorney, Seattle, Washington, Gerald Shucklin, Asst. United States Attorney, Seattle, Wash., Attorneys for Respondent Marshall.

Oscar A. Zabel, Seattle, Washington, Attorney for Respondent Clark.

Before Healy, Circuit Judge, and Cushman and Bowen, District Judges.

MEMORANDUM OPINION—Filed May 10, 1939

[fol. 82] Some of the historical background of these cases may be found in the decisions of the District Court, 18 F. Supp. 645, and of the Ninth Circuit Court of Appeals, 95 F. (2nd) 203.

These are two consolidated suits in admiralty before this 3-judge court, convoked pursuant to 28 U. S. C. A., Sec. 380a, brought by libelants employer and insurance carrier against respondents Deputy Commissioner and John T. Clark for temporary, interlocutory and permanent injunctive relief against Private Act No. 445 of the 74th Congress (H. R. 4439) for the relief of John T. Clark, and against a supplemental order and award of compensation of more than $4,000 made under that Private Act to Clark, a longshoreman, upon the alleged ground that the Private Act and award are illegal, unconstitutional and void, in that they (as Libelants allege) deny to libelants the equal protection of the laws and deprive them of their property without due process of law contrary to the Fifth and Fourteenth Amendments.

Cause No. 47 was commenced as an independent equity suit and Cause No. 48 was commenced as a suit for review by the District Court of the Deputy Commissioner's supplemental award. The causes have been consolidated and transferred to the admiralty side of the court. Both seek the same injunctive relief above noted. Respondents except to the libels on the ground that the libels do not state sufficient facts for the relief demanded. The sole question for decision is whether the Private Act is constitutional and a valid amendment to the Longshoremen's and Harbor Workers' Compensation Act (Title 33 U. S. C. A., Secs. 901, et seq.). Respondents contend that it is valid because it affects only the remedy and not the right of John T.

[fol. 83] Clark. Libelants insist that the Private Act is unconstitutional and void because the rights of the parties had been fixed by a previous binding award of compensation which cannot be changed by the effect of the Private Act giving as it does private relief only to Clark and to no one else similarly situated.

The questioned Private Act of Congress provides as follows:

"An Act

For the relief of John T. Clark, of Seattle, Washington

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, in the case of John T. Clark, of Seattle, Washington, whose disability compensation under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was terminated as of July 5, 1931, by a compensation order filed August 26, 1931, the Employees' Compensation Commission be, and it is hereby, authorized and directed to review such order in accordance with the procedure prescribed in respect of such claims in section 19 of said Act, and in accordance with such section to issue a new compensation order which may terminate, continue, increase, or decrease such compensation, the provisions of sections 21 and 22 of the said Act, as amended, to the contrary notwithstanding: Provided, that such new order shall not affect any compensation paid under authority of the prior order.

"Approved, April 10, 1936."

Bowen, District Judge:

Much of what is stated in the following quotations was said with reference to state statutes, but the principles stated apply equally to Acts of Congress.

"A presumption in favor of constitutionality is raised by the mere fact of the enactment of a statute by the legislature; and the burden of showing that it is unconstitutional is on the party asserting it. * * *" 12 C. J. 791-794. "As to the degree and extent of this presumption, the rule, as variously stated, is that every reasonable presumption will be made in favor of the validity of a statute: * * * and [fol. 84] also that doubt, a fair doubt, a serious doubt, any, and all, doubts, and every reasonable doubt as to the constitutionality of a statute will be resolved in favor of its validity; * * *." 12 C. J. 794-795. "* * * Other state-

ments are that, where doubt exists whether there is a conflict between the statute and the constitution, the statute must prevail, and that the statute must be upheld unless its invalidity appears beyond all doubt, * * *." 12 C. J. 798.

In Williams vs. Norris, 25 U. S. 72, (12 Wheat. 117), one question was which one of two persons had the paramount title in certain lands. Norris claimed that his title was perfected by proceedings under a statute of the state of Tennessee entitled "an act for the relief of Ezekiel Norris", which provided; "Be it enacted", etc., "that the commissioner of West Tennessee be, and he is hereby authorized to issue to Ezekiel Norris, certificates or warrants to the amount of 2,280 acres, being the amount of two entries, No. 2,046 for 1,000 acres and No. 2,047 for 1,280 acres, on which no warrants or grants were issued; provided, that the said Ezekiel Norris shall produce sufficient evidence to the said commissioner that the consideration for said entries was paid, and that no warrant or grant ever issued on said entries."

Williams contended that statute was unconstitutional, but the court overruled that contention and at pages 80-81 (12 Wheat. 127-128) by Marshall, C. J., said: "What difference is there, so far as respects its constitutionality, between the act passed in his (Norris') particular case, and the act containing a general reference of all cases of the same description to the commissioner? * * * There are, undoubtedly, great and solid objections to legislation for particular cases. [fol. 85] But these objections do not necessarily make such legislation repugnant to the constitution of the United States."

That old case of Williams v. Norris, supra, decided in 1827, may be somewhat involved on the facts, but it is clear that in that case Chief Justice Marshall overruled the constitutional objection to a private act of a state legislature for the perfection of one man's title to land against the adverse claims of another man, and held in effect that the fact that legislation is for the private relief of one man in his relationship with another does "not necessarily make such legislation repugnant to the constitution of the United States". Counsel have not cited and the writer of this opinion is not advised of any later Supreme Court case overruling that judgment of Marshall. That situation, until unmistakably cleared up by later Supreme Court decision, renders this three-judge District Court unable to rule with-

out doubt that the Private Act of Congress for the relief of John T. Clark here assailed is unconstitutional. Since its invalidity is not so free from doubt as to overcome the presumption of its validity, the Private Act must be upheld by this court.

The exceptions to the libels will be sustained. An order or orders carrying the foregoing ruling into effect may be settled upon notice or stipulation.

——— ———, Circuit Judge; Edward E. Cushman, District Judge; John C. Bowen, District Judge.

[File endorsement omitted.]

[fol. 86] In United States District Court

In Admiralty Nos. 47 and 48

[Title omitted]

Dissenting Opinion—Filed May 10, 1939

Healy, Circuit Judge, dissenting:

I regret my inability to agree with my associates, but the invalidity of the private act does not seem to me doubtful.

The beneficiary of the act, Clark, was injured in January, 1931, while in the employ of the libellant Paramino Lumber Company. A claim for compensation was filed by Clark. Upon hearing before the deputy commissioner in August, 1931, an award of compensation was made in which it was determined that the claimant had been wholly disabled from the time of the injury to July 5, 1931, but had recovered from his injury and disability on the latter date. The employer and the insurance carrier paid compensation for the period of disability, pursuant to the order. Under the terms of the Longshoremen's Act (Sec. 21 (a); 33 U. S. C. A. Sec. 921 (a)) the compensation order became final at the expiration of thirty days thereafter, there having been no pro- [fol. 87] ceeding to suspend or set it aside.

So far as material here, Sec. 22 of the Longshoremen's Act, in effect then as now, provides that upon his own initiative, or upon the application of any party in interest, on the ground of a change in condition or because of mistake in a determination of fact, the deputy commissioner may

review a compensation case, at any time prior to one year after the date of the last payment of compensation, and may issue a new compensation order continuing, reinstating or increasing compensation. No review was had of the case as permitted by this provision. On April 10, 1936 Congress passed the private act in question. The original order confessedly involved no fraud, and it is conceded that the award now sought to be enjoined was made solely under authority of the special act.

There are doubtless many instances in which injured longshoremen have found themselves in the unfortunate plight of Mr. Clark. Compare, for example, the facts in Kobilkin v. Pillsbury, 9 Cir., — F. (2nd) —. I cannot but believe that the private act, singling out as it does the libellants for the imposition of a burden not imposed by Congress on others in like situation, impinges on their constitutional rights guarante[illegible] by the due process clause of the Fifth Amendment. The arbitrary nature of the act is [fol. 88] unrelieved by any asserted distinction which might serve to differentiate the obligation of these parties from that of other employers or insurance carriers in like circumstances. What Congress has done is to authorize an award of money for the relief of a private individual, payable not out of the public treasury, but out of the pockets of other private parties guilty of no fault. The statute involved in Williams v. Norris, 25 U. S. 72, appears to have been purely remedial, and I see nothing in that decision which would support this legislation.

I think the statute is invalid on grounds apart from the frailties just discussed. It purports to extend or remove the time limits imposed by Secs. 21 and 22 of the Longshoremen's Act, and is applicable only in a case where these time limits had already expired. In Danzer & Co. v. Gulf & Ship Island Railroad Co., 268 U. S. 633, the court dealt with a parallel situation. It was there pointed out that the Interstate Commerce Act created a cause of action against the carrier (in that case the right to damages for misrouting) and at the same time operated as a limitation upon liability. It was held that in the case of such statutory causes of action the lapse of the time limit not only bars the remedy but destroys the liability; and to give the statute a retroactive effect would be to deprive the carrier of its property without due process of law in contravention of the Fifth Amendment.

[fol. 89] Similarly, the Longshoremen's Act (Sec. 4) creates a cause of action for compensation, irrespective of fault. It also limits the time within which an award of additional compensation may be made by the deputy commissioner. This period had expired prior to the enactment of the private act here in question. As of the latter date liability no longer existed. Thus the act not only supplies a remedy but necessarily imports the creation of a new liability.

It would seem that the principle of the Danzer case is equally applicable to general and to private statutes, however free from other infirmities the latter may be.

I think the restraining order heretofore granted should be made permanent.

William Healy, U. S. Circuit Judge.

[File endorsement omitted.]

[fol. 90] In United States District Court, Western District of Washington, Northern Division

In Admiralty

(Consolidated Causes)

No. 47

No. 48

[Title omitted]

Final Decree—Filed June 9, 1939

The above entitled causes having been, and being hereby, consolidated for all purposes, including hearing and appeal, and having been, and being hereby, transferred to the admiralty side of this court, and having come on duly and regularly for hearing on the 24th day of April, 1939, before the undersigned, William Healy, U. S. Circuit Judge, Edward E. Cushman and John C. Bowen, U. S. District Judges, sitting in admiralty as a three-judge court convoked pur-

[fol. 91] suant to Title 28 U. S. C. A., Section 380a, upon

the exceptions of the respondent, John T. Clark, on the ground that the libels herein do not state sufficient facts for the relief demanded, the sole question raised by said exceptions for decision by this court relating to the constitutionality of that certain Private Act No. 445 of the 74th Congress of the United States (H. R. 4439), set forth in the libels herein, and at the conclusion of oral argument herein, the court having taken said consolidated causes under advisement for determination and decision, and the undersigned, Edward E. Cushman and John C. Bowen, U. S. District Judges, having on the 10th day of May, 1939 filed their written memorandum decision as a majority of this three-judge court sustaining the exceptions of said respondent, John T. Clark, to said libels, and the undersigned, William Healy, U. S. Circuit Judge, having on said date filed his dissenting opinion in said causes holding that the exceptions to said libels should be denied and the restraining orders heretofore entered herein made permanent, and the court being in the premises fully advised, it is now, therefore, by the majority of this Court, William Healy, Circuit Judge dissenting, hereby

Ordered, Adjudged and Decreed as follows:

(1) That the exceptions of the respondent, John T. Clark, to the libels in the above entitled and numbered consolidated causes be, and the same are hereby sustained.

(2) That the applications of the libelants, and each of them, in the above entitled and numbered consolidated causes for an interlocutory or permanent injunction be, and the same are, hereby denied.

(3) That the libels in the above entitled and numbered consolidated causes be, and the same are hereby dismissed with prejudice and costs in favor of the respondents.

[fol. 92] (4) That the temporary restraining orders heretofore entered in the above entitled and numbered consolidated causes on the 23rd day of March, 1939, and the bond thereon, shall be and remain in full force and effect for a period of thirty (30) days from and after the date of entry and filing of this decree, and in the event an appeal be taken by libelants from this decree within said period, then said temporary restraining orders and bond thereon shall be and remain in full force and effect until the Supreme

Court of the United States has made its final disposition of said appeal.

Done at Seattle, Washington, this 5th day of June, 1939.
Edward E. Cushman, U. S. District Judge.

Done at Seattle, Washington, this 5th day of June, 1939.
John C. Bowen, U. S. District Judge.

Done at San Francisco, California, this 7th day of June, 1939.
William Healy, U. S. Circuit Judge.

EXCEPTIONS

Libelants, and each of them, except to the foregoing final decree as follows:

1. Except to paragraph (1) of the foregoing final decree sustaining the exceptions of the respondent John T. Clark to the libels in the above entitled and numbered consolidated causes.

2. Except to paragraph (2) of the foregoing final decree denying libelants' applications, and each of them, in the above entitled and numbered consolidated causes for an interlocutory or permanent injunction therein.

[fol. 93] 3. Except to paragraph (3) of the foregoing final decree dismissing the libels in the above entitled and numbered consolidated causes with prejudice and with costs in favor of respondents.

Libelants' foregoing exceptions to this final decree, and each of them, be and the same are hereby allowed.

Done at Seattle, Washington, this 5th day of June, 1939.
Edward E. Cushman, U. S. District Judge.

Done at Seattle, Washington, this 5th day of June, 1939.
John C. Bowen, U. S. District Judge.

Done at San Francisco, California, this 7th day of June, 1939.
William Healy, U. S. Circuit Judge.

Stipulated and approved for entry without further notice. Oscar A. Zabel, Proctor for respondent, John T.

Clark. J. Charles Dennis, U. S. District Attorney. Gerald Shucklin, Assistant U. S. District Attorney, Proctors for Wm. A. Marshall, Deputy Commissioner.

Presented by: Stanley B. Long, Of Bogle, Bogle & Gates, Proctors for Libelants.

[File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

In Admiralty

(Consolidated Causes)

No. 47

No. 48

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 24, 1939

To the Honorable William Healy, United States Circuit Judge, Edward E. Cushman and John C. Bowen, District Judges, Sitting in admiralty as a Three-Judge Court, convoked pursuant to Title 28 U. S. C. A., Section 380a:

The above named libelants in the above entitled and numbered consolidated causes, feeling aggrieved by the final decree herein sustaining the exceptions of the respondent John T. Clark to the libels herein, denying libelants' applications herein for an interlocutory or permanent injunction, [fol. 95] and dismissing said libels with prejudice and with costs in favor of the respondents, made and entered in the above entitled and numbered consolidated causes on the 9th day of June, 1939, do hereby appeal from the said decree, and each and every part thereof, to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said final decree was based, duly authenticated, be sent to the Supreme Court of the United States

under the rules of such court in such cases made and provided, and your petitioners further pray that the temporary restraining orders heretofore entered in the above entitled and numbered consolidated causes on the 23rd day of March, 1939, and the bond thereon, be and remain in full force and effect until the Supreme Court of the United States shall have made its final disposition of said appeal.

Paramino Lumber Company, a corporation, and Union Insurance Society of Canton, Ltd., a Corporation, Appellants, by Bogle, Bogle & Gates, Stanley B. Long, Edward G. Dobrin, Their Proctors.

In United States District Court

Order Allowing Appeal, Continuing Temporary Restraining Orders and Fixing Bond—Filed June 24, 1939

Appeal of the above entitled and numbered consolidated causes to the Supreme Court of the United States is hereby allowed upon giving cost bond as required by law in the penal sum of $1,000.00, and the temporary restraining [fols. 96-98] orders heretofore entered in the above entitled and numbered consolidated causes on the 23rd day of March, 1939, and the bond thereon in the sum of $5,000.00 shall be and remain in full force and effect until the Supreme Court of the United States shall have made its final disposition of said appeal.

Done at Tacoma, Washington, this 20th day of June, 1939.

Edward C. Cushman, United States District Judge.

Done at Seattle, Washington, this 19th day of June, 1939.

John C. Bowen, United States District Judge.

Done at San Francisco, California, this 22nd day of June, 1939.

William Healy, United States Circuit Judge.

Copy received, amount of cost bond approved, and notice of presentation waived this 19th day of June, 1939. J. Charles Dennis, U. S. District Attorney; Gerald Shucklin, Assistant U. S. District Attorney, Proctors for Wm. A.

Marshall, Deputy Commissioner. Oscar A. Zabel, Proctor for respondent, John T. Clark.
Presented by: Stanley B. Long.

[File endorsement omitted.]

[fol. 99] IN UNITED STATES DISTRICT COURT

No. 47

No. 48

In Admiralty (Consolidated Causes)

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 24, 1939

Come now the libelants in the above entitled and numbered consolidated causes and file the following assignment of errors, upon which they will rely in their presentation of the appeal to the Supreme Court of the United States from the final decree made and entered by this Honorable Three-Judge Court, convoked pursuant to Judicial Code, Section 266, as amended by Act of August 24, 1937, Chapter 754, Section 3, 50 Stat. 752, Title 28 U. S. C. A., Sec. 380a, sus-
[fol. 100] taining exceptions of the respondent John T. Clark to the libels in the above entitled and numbered consolidated causes, denying libelants' applications for an interlocutory or permanent injunction therein, and dismissing said libel with prejudice and costs in favor of respondents:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in granting and in not denying and overruling the exceptions of the respondent John T. Clark to said libels herein, and each of them, in that it appears from said libels and each of them that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought herein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which the respondent Wm. A. Marshall, as Deputy Commissioner under the Longshoremen's and Harbor Workers' Compensation Act purported to have obtained authority to and did review the compensation order and award of compensation of August

26, 1931, and pursuant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in granting to respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and in depriving libelants of their property without due process of law.

2. That the United States District Court for the Western District of Washington, Northern Division, erred in denying and not granting the applications of the libelants, and each of them, for an interlocutory or permanent injunction in [fol. 101] the above entitled and numbered consolidated causes, in that it appears from said libels and each of them that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought therein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which the respondent Wm. A. Marshall, as Deputy Commissioner under the Longshoremen's and Harbor Workers' Compensation Act purported to have obtained authority to and did review the compensation order and award of compensation of August 26, 1931, and pursuant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in granting to respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and in depriving libelants of their property without due process of law.

3. That the United States District Court for the Western District of Washington, Northern Division, erred in dismissing the above entitled and numbered consolidated causes and the libels therein, and each of them, in that it appears from the libels and each of them that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought therein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which the respondent Wm. A. Marshall,

as Deputy Commissioner under the Longshoremen's and Harbor Workers' Compensation Act purported to have obtained authority to and did review the compensation order and award of compensation of August 26, 1931, and pur- [fols. 102-121] suant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in granting to respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and in depriving libelants of their property without due process of law.

Wherefore, libelants pray that said final decree be reversed and that an interlocutory or permanent injunction issue against respondents, and each of them, as prayed for in said libels, and that said United States District Court for the Western District of Washington, Northern Division, be directed to reverse and set aside said final decree, overrule said exceptions of the respondent John T. Clark, and to enter a decree in said libels as prayed for therein.

Bogle, Bogle & Gates, Stanley B. Long, Edward G. Dobrin, Proctors for Libelants.

Copy received this 19th day of June, 1939.

J. Charles Dennis, United States District Attorney; Gerald Shucklin, Assistant U. S. District Attorney, Proctors for Wm. A. Marshall, Deputy Commissioner; Oscar A. Zabel, Proctor for respondent, John T. Clark.

[File endorsement omitted.]

[fols. 122-129] Bond on Appeal for $1,000.00 approved, and filed June 24, 1939, omitted in printing.

[fol. 130] IN UNITED STATES DISTRICT COURT

No. 47

No. 48

In Admiralty

(Consolidated Causes)

[Title omitted]

PRAECIPE FOR TRANSCRIPT ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 26, 1939

To the Clerk of the Above Entitled Court:

You will please prepare the record on appeal to the Supreme Court of the United States in the above entitled and numbered consolidated causes, to consist of all necessary papers and certificates, including the following:

1. Bill of Complaint in Cause No. 47.

2. Summons in cause No. 47 with attached return of service.

[fol. 131] 3. Bill of Complaint in Cause No. 48 (omitting transcripts of testimony taken at hearings before respondent Wm. A. Marshall, August 25, 1931, November 22, 1938, and June 5, 1939, and exhibits thereto attached).

4. Summons in Cause No. 48 with attached return of service.

5. Motion for temporary restraining order in Cause No. 47.

6. Notice of hearing motion for temporary restraining order in Cause No. 47.

7. Motion for temporary restraining order in Cause No. 48.

8. Notice of hearing motion for temporary restraining order in Cause No. 48.

9. Motion of respondent John T. Clark to dismiss Bill of Complaint in Cause No. 47.

10. Motion of respondent John T. Clark to dismiss Bill of Complaint in Cause No. 48.

11. Temporary restraining order in Cause No. 47.

12. Temporary restraining order in Cause No. 48.

13. Bond on temporary restraining order in Causes No. 47 and No. 48.

14. Clerk's minute entry of March 28, 1939, fixing date of hearing by three-judge court and five-day notice in Causes No. 47 and 48.

15. Order of March 29, 1939, convoking three-judge court and five-day notice to Attorney General and respondents, and Clerk's certificate of mailing thereto attached, in Cause No. 47.

16. Order of March 29, 1939, convoking three-judge court and five-day notice to Attorney General and respondents, [fol. 132] and Clerk's certificate of mailing thereto attached, in Cause No. 48.

17. Motion of respondent John T. Clark for judgment on the pleadings in Cause No. 47.

18. Motion of respondent John T. Clark for judgment on the pleadings in Cause No. 48.

19. Clerk's minute entry of April 24, 1939, in causes No. 47 and No. 48, relating to hearings by three-judge court, and transferring causes to admiralty side of court, and order consolidating same.

20. Memorandum decision of the Honorable Edward E. Cushman and John C. Bowen, United States District Judges, sustaining exceptions in consolidated causes No. 47 and No. 48, filed May 10, 1939.

21. Memorandum decision of the Honorable William Healy, United States Circuit Judge, dissenting, in consolidated causes No. 47 and No. 48, filed May 10, 1939.

22. Final decree, sustaining exceptions, denying injunctive relief and dismissing the libels in consolidated causes No. 47 and No. 48, filed June 9, 1939.

23. Petition for appeal to the Supreme Court of the United States, and order thereon.

24. Notice of appeal to the Supreme Court of the United States.

25. Assignment of errors.

26. Jurisdictional statement required by Supreme Court Rule 12, Paragraph 1.

27. Citation on appeal.

28. Cost bond on appeal.

29. Statement directing attention to Supreme Court Rule 12, Paragraph 3.

[fol. 133] 30. Acknowledgment of service of petition for appeal and order thereon, assignment of errors, jurisdictional statement, and statement directing attention to Supreme Court Rule 12, Paragraph 3.

31. This praecipe.
32. Clerk's certificate.

You are requested to transmit such record to the Clerk of the Supreme Court of the United States in the manner provided by law and applicable rules of court.

Bogle, Bogle & Gates, Stanley B. Long, Edward G. Dobrin, Proctors for Libelants and Appellants herein. J. Charles Dennis, U. S. District Attorney; Gerald Shucklin, Assistant U. S. District Attorney, Proctors for Wm. A. Marshall, Deputy Commissioner, Respondent and Appellee herein. Oscar A. Zabel, Proctor for John T. Clark, Respondent and Appellee herein.

[File endorsement omitted.]

[fols. 134-135] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 136-138] Citation, in usual form, showing service on J. Chas. Dennis et al. filed June 24, 1939, omitted in printing.

[fol. 139] SUPREME COURT OF THE UNITED STATES

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF RECORD REQUIRED BY SUPREME COURT RULE 13, PARAGRAPH 9—Filed August 7, 1939

Come now the appellants in the above entitled consolidated causes, and in pursuance to Supreme Court Rule 13, Paragraph 9, respectfully show as follows:

I

The points to be relied upon by appellants on appeal of the above entitled and numbered causes in this court are as [fol. 140] follows:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in grant

ing, and not denying and overruling the exceptions of the respondent, John T. Clark to said libels herein, and each of them, in that it appears from said libels, and each of them, that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought therein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which respondent Wm. A. Marshall, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, purported to have obtained authority to and did review the compensation order and award of compensation *of compensation* of August 26, 1931, and pursuant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth amendments to the Constitution of the United States, in granting to the respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and imposes burdens upon appellants as employers and insurance carrier under said Act not imposed upon others similarly situated, and deprives libelants (appellants herein) of their property without due process of law;

2. That the United States District Court for the Western District of Washington, Northern Division, erred in denying and not granting the applications of the libelants (appellants herein) and each of them, for an interlocutory or [fol. 141] permanent injunction in the above entitled and numbered consolidated causes, in that it appears from said libels, and each of them, that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought therein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which the respondent Wm. A. Marshall, as Deputy Commissioner under the Longshoremen's and Harbor Workers' Compensation Act, purported to have obtained authority to and did review the compensation order and award of compensation of August 26, 1931, and pursuant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation

order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in granting to respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and imposes burdens upon appellants as employer and insurance carrier under said Act not imposed upon others similarly situated, and deprives libelants (appellants herein) of their property without due process of law;

3. That the United States District Court for the Western District of Washington, Northern Division, erred in dismissing the above entitled and numbered consolidated causes, and the libels therein, and each of them, in that it appears from said libels, and each of them, that the facts therein alleged are sufficient to constitute a cause of action for the injunctive relief sought therein, and that Private Act No. 445 of the 74th Congress of the United States (49 Stat. 2244), pursuant to which respondent Wm. A. Marshall, Deputy Commissioner, under the Longshoremen's [fol. 142] and Harbor Workers' Compensation Act, purported to have obtained authority to and did review the compensation order and award of compensation of August 26, 1931, and pursuant to which said respondent purported to have obtained authority to and did issue and file a supplemental compensation order and award of compensation on the 13th day of March, 1939, is unconstitutional and void, being in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, in granting to respondent John T. Clark special privileges not accorded equally to other employees subject to the Longshoremen's and Harbor Workers' Compensation Act, and imposes burdens upon appellants as employer and insurance carrier under said Act not imposed upon others similarly situated and deprives libelants (appellants herein) of their property without due process of law.

II.

That to enable this court to consider the foregoing points upon which appellants will rely on this appeal, a complete

record on appeal filed with the Clerk of this court will be necessary.

Dated this 1st day of August, 1939.

Bogle, Bogle & Gates, Stanley B. Long, Edward G. Dobrin, Proctors for Appellants.

Service of the foregoing by receipt of true copy thereof is hereby acknowledged this 2d day of August, 1939.

J. Chas. Dennis, United States District Attorney; Gerald Shucklin, Assistant U. S. District Attorney, Proctors for Wm. A. Marshall, Deputy Commissioner. Oscar A. Zabel, Proctor for Respondent, John T. Clark.

[fol. 143] [File endorsement omitted]

Endorsed on cover: Edward G. Dobrin. File No. 43,678. W. Washington, D. C. U. S., Term No. 271. Paramino Lumber Company and Union Insurance Society of Canton, Ltd., Appellants, vs. Wm. A. Marshall, Deputy Commissioner Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and John T. Clark. Filed August 7, 1939. Term No. 271 O. T. 1939.